

LETTER OPINION
95-L-124

May 19, 1995

Mr. Stephen J. Rice
Walsh County State's Attorney
Walsh County Courthouse
Grafton, ND 58237

Dear Mr. Rice:

Thank you for your letter regarding the annexation of new territory to an existing fire protection district when the owners of that territory reside in the existing district rather than the new territory.

The procedure for annexing adjacent territory to an existing fire protection district is initiated by a petition signed by at least 60 percent of the qualified electors who reside and own assessed property within the boundaries of the territory.

N.D.C.C. ? 18-10-11. A person who owns land "which is the subject of an annexation petition may not sign the petition unless [the person] also resides within the boundaries to be annexed." Letter from Attorney General Robert Wefald to Tom Slorby (July 5, 1983). Your letter indicates that the proposed new territory is generally uninhabited because its owners reside in the existing district. Thus, because no one is eligible to sign the required petition, I agree with your conclusion that the land cannot be annexed under N.D.C.C. ? 18-10-11.

You ask if there is any other way this territory can be added to the fire protection district. In addition to annexation under N.D.C.C. ? 18-10-11, the boundaries of an existing fire protection district can be changed to include new territory "in the manner prescribed by sections 18-10-02 and 18-10-03" N.D.C.C. ? 18-10-12; Letter from Attorney General Robert Wefald to Tom Slorby (March 16, 1984). Under those sections, the boundaries of the existing district in Walsh County can be expanded to include the uninhabited territory described in your letter if a proper petition is filed and granted by the board of county commissioners.

You also ask whether the owners of the uninhabited new

territory are qualified to sign a petition adding that territory to the existing district. The answer depends on the type of action requested in the petition. For annexing new territory under N.D.C.C. ? 18-10-11, the petition may only be signed by a "qualified elector," which means "a citizen of the United States who is eighteen years of age or older; and is a resident of this state and of the area affected by the petition." N.D.C.C. ? 1-01-51. As residents of the existing district, the owners of the new territory are certainly residents of the area affected by the annexation petition. However, as explained above, these owners may not sign the petition because N.D.C.C. ? 18-10-11 also requires that they reside and own assessed property in the proposed new territory.

For modifying the boundaries of the existing district, rather than annexing new territory, the petition must be "signed by at least sixty percent of the freeholders whose names appear on the current tax schedules . . . and who appear to reside within the suggested boundaries of the proposed district." N.D.C.C. ? 18-10-02. Because this section uses the phrase "proposed district," the class of persons who are qualified to sign such a petition includes freeholders residing in the existing district as well as those residing in the proposed new territory. The term "freeholders" has been defined by this office to mean owners of real property in the district. Letter from First Assistant Attorney General Helgi Johanneson to Mr. Vance Arneson (March 11, 1961). Thus, because these owners reside and own real property in the "proposed" district, which includes the new territory, they may sign such a petition even though they do not reside in the new territory. Of course, more signatures would be required as a result of proceeding under N.D.C.C. ? 18-10-12 instead of N.D.C.C. ? 18-10-11.

If such a petition is unsuccessful, the existing district may contract with the township where the land is located to provide fire protection services. N.D.C.C. ? 18-10-10.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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